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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,082	02/15/2002	Kenneth Jacobs	P 284907	8644
909	7590	02/13/2004	EXAMINER	
PILLSBURY WINTHROP, LLP P.O. BOX 10500 MCLEAN, VA 22102			TRAN, KHOA H	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 02/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/076,082

Applicant(s)

JACOBS ET AL.

Examiner

Khoa Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 9,10,30 and 31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8,11-29 and 32-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: \_\_\_\_\_

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***Election/Restrictions***

Applicants' election with traverse of Species II in Paper No. 6 is acknowledged. The traversal is on the grounds that "species I and II are sufficiently related that a thorough search and examination for the subject matter of any one species would necessarily encompass the search and examination of the remaining species" and the application can be "searched and examined without serious burden". This argument is not found to be persuasive because applicants (1) fail to show that a coextensive search is a reason for not requiring an election requirement, (2) fail to establish that a coextensive search is present, and (3) fail to establish that search is the only criteria in determining the burden imposed on the examiner.

Applicants' general allegations of "sufficiently related" search and that search and examination of the entire application would not place a serious burden on the examiner fail to comply with the requirement of 37 CFR 1.111 and are wholly insufficient. In particular, what is the basis relied upon to arrive at the conclusion expressed? Are applicants alleging that the examiner need only consider the patentability of the generic aspect of the invention? Are applicants asserting that the species are not patentably distinct and thus are obvious in view of one another? Are applicants asserting that all claims stand or fall with the patentability determination of claim 1 and thus separate arguments directed toward each individual species would not have to be considered? Nevertheless, it is extremely burdensome to have to carry out an examination, including consideration of and response to arguments, for each of the specific features of the multiple patentably distinct species identified.

With respect to claims 11-13, these claims are readable on the elected species II because the claims recite a horizontal upper mounting member being secured to a wall.

Accordingly, claims 9, 10, 30 and 31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant timely traversed the election requirement in Paper No. 6. The provisional election requirement is still deemed to be proper and is therefore made FINAL.

### ***Drawings***

The drawings are objected to because Figures 1, 3A, 3B, 9, 10A, 10B, 11, and 17 do not permit adequate reproduction since they are shaded and it is not possible to ascertain that all of reference numerals have been correctly connected to the respective part to which they refer. In particular, it should be noted that Figures 3A and 3B, reference numerals "30", "32", "36", and "38" do not appear to connect to the part to which they refer, see page 9, lines 8-12 of paragraph [0045]. Further, reference numerals "40" and "42" both have been used to designate to the same part. These ambiguities also apply to Figures 9-10B, i.e., it's unclear to determine which channels thereon the horizontal support "70" is a first receiving channel "80" and a second receiving channel "82". With respect to Figure 5C, it's unclear which cross section of the drawings does Figure 5C suppose to identify since Figures 5A and 5B both do not show the projections located adjacent to the top of an opening aperture "57". With respect to Figures 12 and 13, reference numerals "110" should be deleted because they

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are not the adjustable bracket, see Figure 14 for illustration of an adjustable bracket.

Correction is required.

The drawings are objected to because Figures 14-18A and 19-21 reference character "110" has been used repeated to designate to different structures of both the adjustable bracket and the supporting clamp. Further, Figures 14, 15, and 20 are objected to because reference character "112" has been used repeated to designate to a variation of an engaging assembly. Finally, reference character "118" has been used repeated to designate to different supporting structure assemblies, see Figures 14-16, 20 and 21. It should be noted that these several type of brackets, variation of engaging assemblies, and the supporting assemblies are not structurally the same and therefore they cannot share the same reference character. Further, it should be noted that by having variation structures sharing the same reference numerals it creates ambiguity as to which structures the claim language is drawn to when it being claimed. Correction is required.

The drawings are objected to because Figure 17 fails to show a shoe rack "124" as describe on page 19, line 11 of paragraph [0064]. Correction is required.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 14-25 are rejected under 35 U.S.C. 102(b) as being anticipated by L. E. Tassell. Tassell discloses a support structure assembly of a storage system comprising at least two walls (7), at least two elongated vertical support (3, 4, and 5) each having a length, a bottom portion engaging a floor (2) and a top portion engaging a ceiling (1), see Figure 3, and column 2, lines 17-19, each of the vertical support further includes a front channel portion, a rear channel portion (12) and a middle portion (13) which interconnects between the front and the rear channel portions to form a middle channel portion (13), the channel portion is extended the length of the vertical support, see Figure 7, and at least two adjustable door mounting brackets (27) connected to the respective vertical support (3, 4, and 5), each adjustable door mounting bracket having a fastener engaging assembly (38) which has a removable support assembly (34 and 44) connected to the engaging assembly (38), see Figures 7 and 8, to selective lock and unlock within the channel, and the adjustable brackets further include a shelf storage component for storing articles thereon. See Figures 1-3. With respect to claims 15, 18, and 23, it should be noted that the elongated vertical support and the brackets are cast in a continuous extrusion process, see column 2, lines 33-36 and column 3, lines 17-21. With respect to the material of rolled steel and reinforced plastic which are manufactured the elongated vertical support therefrom, it would have been obvious to one of ordinary skill in the art as a matter of engineering design choice to utilize a well known per se and commercial available material of rolled steel or

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reinforced plastic to produce the elongated vertical support therefrom because it is well within the level of skill in the art to utilize the known material to produce the elongated vertical support according to its suitability of intended use without structurally alter the elongated vertical support thus it does not produce any new matter.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over L. E. Tassell as applied to claims 1-4 and 14-25 above, and further in view of Ballard. Tassel does not teach a pair of ribs dividing the channel into first and second portions. However, Ballard teaches a pair of ribs (46) dividing the channel into first and second portions to retain an engaging assembly (R) that supporting a bracket (B) thereof, see Figures 11 and 29. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide Tassell's elongated vertical supports with ribs therein the channel and an engaging assembly as taught by Ballard in order to frictionally retain the engaging assembly that does not utilizing fastener means.

Claims 7 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over L. E. Tassell in view of Ballard as applied to claims 1-6 and 14-27 above, and further in

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view of J. G. Fenwick. Tassell in view of Ballard do not teach an adjustable lower mounting member assembly having a lower connection assembly that connects to a lower end of an elongated support and connected to a floor connection assembly. However, Fenwick teaches an adjustable lower mounting member assembly (106) comprises a floor connection assembly (109) engaging a floor mounting member (115) and a lower connection assembly (107), and the lower connection assembly is adapted to engage with the elongated vertical support (32). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the bottom portion of the elongated vertical support of Tassell with the provision of a lower mounting member assembly as taught by Fenwick in order to level the elongated vertical support and the support structure assembly with respect to an uneven floor.

Claims 8, 11-13, 29, and 32- 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over L. E. Tassell in view of Ballard and J. G. Fenwick as applied to claims 1-7 and 14-28 above, and further in view of <sup>Dorn</sup>~~Dorn~~ et al. and Peterson et al. Tassell in view of Ballard and J. G. Fenwick do not teach a door or panel receiving upper horizontal support connected to a top portion of the elongated vertical support. However, Dorn et al. teach a door or panel receiving upper horizontal support (23) supporting a panel (1) therein between and a fixing block (26) having portions (28) connecting to a first track (24) on a first end portion of the horizontal support, a complementary structure (37 and 40) connecting the fixing block (26) and the horizontal support (23) to a top portion of the elongated vertical support, and a second track is sized to receive an end portion of a horizontal panel (1). See Figure 2. It would have

DPS



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DPS • been obvious to one of ordinary skill in the art at the time of the invention was made to provide the supporting structure assembly of Tassell with a door or panel receiving upper horizontal support and a fixing block as taught by <sup>Dorn</sup>~~Don~~ et al. in order to have a door or panel receiving upper horizontal support that enables to retain a panel therein between and run electrical wires therethrough. Peterson et al. teach a wall-mounting bracket (42 and 46) mounted to a fixing block (50) that secured to a horizontal support (26). See Figures 1, 2, 7, and 8. At the time of the invention was made, it would have been obvious to one of ordinary skill in the art to substitute the complement structure of <sup>Dorn</sup>~~Don~~ et al. with the provision of a wall mounting bracket as taught by Peterson et al. in order to connect to a permanent wall so that to prevent the support structure from falling over because it is well within the level of skill in the art to utilize the known features of the art for the purpose for which they are know.

The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. Whisson, Jacobs, Shindoll et al., Phillips, and J. McClelland are cited to show a supporting structure of a storage system that is similar to applicants supporting structure; Albertini, Wendt, Taylor et al., Pollard, Huebner et al., Crossman et al., Way, Schreiner et al., Pavanoe et al., and Hsiao are cited to show configuration of an elongated support or supporting track that is similar to applicants elongated support or supporting track; and Papsco et al., Nehls, Maxcy et al., and Sterling et al. are cited to show an adjustable bracket with engaging assembly that are similar to applicants' brackets and engaging assemblies.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 9:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group before a final Office action is (703) 872-9306 and after a final Office action is (703) 872-9327.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Khoa Tran  
February 03, 2004



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